IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.511 OF 1992

The State of Maharashtra ...Appellant.

V/s

Lal Mohammad Sairulla Khan
R/o. Agar Road, Kurla
Shastry Chowle, Wapi Transport
Kurla (West), Bombay-70 ...Respondent.

Mr. D.P. Adsule for the appellant.

None for the respondent.

CORAM: V.M.KANADE,J.

DATE: 9th December, 2004

ORAL JUDGMENT:

1. Heard the learned APP for the State.

2. State is challenging the Judgment and Order passed by the Metropolitan Magistrate, 35th Court, V.T. Bombay. By the said Judgment and Order, the learned Magistrate acquitted the accused of the offence punishable under section 3(a) of the R.P. (U.P.) Act, 1966. The trial against original accused Nos. 1 and 2 was separated as they were absconding and a charge was framed against accused No.3.

3. From the perusal of the evidence of P.W.1 and P.W.2, it can be seen that they have not been in a position to identify the seized property as railway

property. In the absence of evidence to prove that the property in question was railway property, the burden does not shift on the accused as the initial burden has not been discharged by the prosecution. The incident in question pertains to the year 1977. I do not see any reason to interfere with the said order passed by the Trial Court. Appeal is dismissed.

V.M. KANADE, J.